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22CV42204

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MULTNOMAH COUNTY

EDWARD DAIZOVI,)	Case No.:
)	
Plaintiff,)	COMPLAINT AND DEMAND FOR JURY
)	TRIAL
vs.)	
)	(Tort-Premises Liability, Negligence and
)	Gross Negligence)
AIRBNB, INC., a foreign corporation, and)	
JANIS MACKEY, an individual)	(Not Subject to Mandatory Arbitration)
)	
Defendants.)	Total prayer: \$1,650,000.00
)	
)	Filing fee \$884.00 per ORS 21.160(1)(d)

For his complaint against Defendants, Plaintiff EDWARD DAIZOVI (hereinafter
“plaintiff”) alleges:

1.

At all material times, Plaintiff is an individual residing in Broward County, Florida.

2.

At all materials times, defendant Airbnb, Inc. (“Airbnb”) is a Delaware Corporation with
its principal place of business as 888 Brannan Street #4, San Francisco, CA 94103 and its
registered agent as Corporation Service Company, 1127 Broadway Street NE, Suite 310, Salem,
OR 97301. Airbnb has regular and sustained business activities in Multnomah County, OR and
has advertised to and done business with consumers in Multnomah County, Oregon.

3.

At all material times, defendant Janis Mackey is an individual residing in Lane County, Oregon.

4.

Jurisdiction and venue are proper in the Circuit Court for Multnomah County because defendant Airbnb conducts regular and sustained business in Multnomah County, Oregon. Jurisdiction and venue are also proper because the defendants have sufficient minimum contacts with Oregon and intentionally availed themselves of the consumers and markets within Oregon.

5.

At all material times, defendant Ms. Mackey owned the residential real property located at 1642 Riverview Street, Eugene, Oregon, a two-bedroom home (hereinafter referred to as the "Property"). Ms. Mackey offers the Property for short term rental through defendant Airbnb.

6.

On May 3, 2021, Mr. Daizovi's daughter, responded to an online advertisement hosted by Airbnb with the express permission of Ms. Mackey.

7.

At all materials times, defendants Ms. Mackey and Airbnb knew that the Property had an outdoor wraparound untreated wooden deck with accumulated organic growth that made the walking surface slippery and hazardous. Defendants Ms. Mackey and Airbnb knowingly refused to take precautions to prevent, mitigate or inhibit the organic growth that created the hazard on the walking surface.

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8.

At all material times, defendants Ms. Mackey and Airbnb had control of, or the right to control, the features and use of the Property, including the hazardous walking surface on the untreated wooden deck, access thereto, restrictions to access, and warnings thereof.

9.

On or about December 13, 2020, plaintiff and others were granted access to the Property, including the hazardous walking surface on the untreated wooden deck. Plaintiff's access to the Property was shared in common with the other occupants of the Property as well as defendant Ms. Mackey. During plaintiff's use of the Property, defendants, and each of them, made no effort to prevent or limit access to the hazardous walking surface on the untreated wooden deck by plaintiff or the other occupants of the property. The unrestricted access and use of the hazardous walking surface on the untreated wooden deck was encouraged, promoted, and allowed by defendants. Defendants and each of them, had actual or constructive knowledge of defendants Ms. Mackey's failure to restrict access to the hazardous walking surface on the untreated wooden deck and her encouragement, promotion, and allowance to access and use it.

10.

On or about December 13, 2020, plaintiff arrived at the Property, unloaded some luggage inside the home. Plaintiff then walked out of the home, onto the untreated wooden decking on the side of the Property and was descending the wooden staircase. Plaintiff placed his right hand on the wooden handrail. Plaintiff was wearing Merrell hiking shoes with Vibram non-slip soles. Due to the accumulation of moss, slime and organic matter on the walking surface, plaintiff slipped. Plaintiff's feet flew out from under him and his body went horizontal before violently striking the untreated wood of the walking surface and was seriously and permanently injured.

1 This fall caused plaintiff's serious and permanent injuries and damages as alleged herein, all of
2 which were reasonably foreseeable.

3 11.

4 At all times material, plaintiff's use of the Property, including his usage of the wooden
5 decking, walkway and staircase was reasonably foreseeable to defendants Ms. Mackey and
6 Airbnb.

7 12.

8 At all material times, defendants Ms. Mackey and Airbnb negligently allowed the
9 unmitigated accumulation of organic growth on the untreated wooden walking surfaces and
10 promoted and encouraged occupants of the Property to use the deck walkway and staircase.
11 Defendants' conduct constituted a reckless disregard for the safety of the Property and the
12 Property's occupants.

13 13.

14 As a result of the conduct of the defendants as set out above and provided below, plaintiff
15 sustained the following injuries and noneconomic damages, all of which were avoidable and
16 were reasonably foreseeable. Some of these injuries may be permanent:

- 17
- 18 a) Lumbar spine contusion;
 - 19 b) Lumbar spine pain with decreased mobility;
 - 20 c) Pelvic contusion;
 - 21 d) Pelvic pain with decreased mobility;
 - 22 e) Abdominal pain;
 - 23 f) Hip contusion;
 - 24 g) Hip pain with decreased mobility;
 - 25 h) Numbness and tingling;
 - 26 i) Balance problems;
 - j) Numbness in bilateral thighs;
 - k) Urinary incontinence;

- l) Hypotension;
- m) Anxiety;
- n) Depression; and
- o) Inconvenience with usual and everyday activities.

14.

As a result of the conduct of defendants as set out above and provided below, plaintiff has suffered and will continue to suffer noneconomic damages in an amount to be determined by the jury to be fair and reasonable, but not to exceed the sum of \$1,500,000.

15.

As a result of the conduct of defendants as set out above and provided below, plaintiff has suffered the following economic damages, in an amount to be determined by the jury to be fair and reasonable, but not to exceed \$150,000 with constitutive subtotals set out below:

- (a) Reasonable and necessary medical expenses to date in the approximate sum of \$45,000;
- (b) Future reasonable and necessary medical expenses in an amount to be determined at trial, but, for purposes of ORCP 18, presently estimated to total \$100,000 (plaintiff expressly reserves the right to amend this Complaint to include an updated estimate of these costs at the time of trial and defendants should consider this notice of the same); and
- (c) Discontinuation of health insurance, forcing replacement insurance to be procured in the amount of \$5,000.

16.

Defendants were negligent in one or more of the following particulars, each of which constituted a failure to use reasonable care to protect guests on the Property, thereby creating a foreseeable and unreasonable risk of injury to plaintiff:

- (a) In creating, maintaining, and/or operating the Property in such a way to allow the deck and staircase to constitute an unreasonable risk of danger;

1 (b) In allowing the Property to exist in such a way that there was unrestricted access to
2 the deck and staircase that constituted an unreasonable risk of danger;

3 (c) In encouraging, promoting, and/or allowing the use of the Property with the deck and
4 staircase in disrepair so as to constitute an unreasonable risk of danger;

5 (d) In failing to verbally warn guests of the existence of the unreasonable risk of danger
6 associated with using the deck and staircase on the property;

7 (e) In failing to remove the organic growth from the deck and staircase prior to use by
8 invitees;

9 (g) In failing to make obvious for the guests by way of lighting, signs, flags, markers, or
10 other similar devices or means, the existence and location of the dangerous condition created by
11 the organic growth on the deck and staircase; and

12 (h) In failing to treat the deck and staircase so that organic growth would be unlikely to
13 form and create an unreasonable risk of danger.

14 20.

15 The negligent conduct of defendants caused foreseeable harm to plaintiff including
16 damages in the amounts alleged in paragraphs 13, 14 and 15.

17 21.

18
19 Plaintiff places defendants on notice of his intention to seek leave to amend this
20 complaint to include claims for punitive damages.

21 22.

22 **WHEREFORE**, plaintiff prays for a judgment against defendant as follows:

23
24 (1) For plaintiff's economic damages consisting of replacement insurance and past and future
25 medical care, in an amount to be determined by a jury at trial but not to exceed \$150,000.

26 Plaintiff reserves the right to amend this paragraph at the time of trial;

- 1 (2) For plaintiff's total non-economic damages in an amount to be determined by a jury at
2 trial but not to exceed \$1,500,000. Plaintiff reserves the right to amend this paragraph at
3 the time of trial; and
4 (3) For plaintiff's costs, disbursements, and such other relief as the Court deems just and
5 appropriate.

6
7 DATED this 12th day of December, 2022.

8
9 By: /s/ Joshua V. Callahan
10 Joshua V. Callahan, OSB No. 110853
11 Joshua@callahanlawyer.com
12 of Attorneys for Plaintiff

13
14 A TRIAL BY JURY IS HEREBY DEMANDED.

15 By: /s/ Joshua V. Callahan
16 Joshua V. Callahan, OSB No. 110853
17 Joshua@callahanlawyer.com
18 of Attorneys for Plaintiff
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